

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

DOCKET NO. 2008-420-E

IN RE:

South Carolina Minerals, Inc.

Complainant,

vs.

Aiken Electric Cooperative, Inc.,

Defendant and Third-Party
Plaintiff,

vs.

South Carolina Electric & Gas,

Third-Party Defendant.

**ANSWER OF DEFENDANT AIKEN
ELECTRIC COOPERATIVE, INC.**

AND

THIRD-PARTY COMPLAINT

The Defendant, Aiken Electric Cooperative, Inc. (“Aiken Electric”) responds to the allegations of Plaintiff’s Complaint and asserts a Third-Party Complaint against the Third-Party Defendant, South Carolina Electric & Gas (“SCE&G”) as follows:

**FOR A FIRST DEFENSE
(Denial)**

1. Each and every allegation of the Complaint not specifically admitted herein is denied.
2. Aiken Electric lacks sufficient information to form a belief as to the allegations of Paragraphs 1 and 2 of the Complaint and, therefore, denies the same.
3. In response to the Paragraph 3 of the Complaint, Aiken Electric admits the allegations of that Complaint regarding its state of incorporation and where it transacts business.

4. In response to Paragraph 4 of the Complaint, Defendant Aiken Electric denies that this is not a dispute where a customer seeks to choose another electric supplier. Aiken Electric lacks sufficient information to form a belief as to the truth of the remaining facts alleged and, therefore, denies the same.

5. Defendant Aiken Electric denies the allegations of Paragraph 5 of the Complaint.

6. In response to Paragraph 6 of the Complaint, Defendant Aiken Electric lacks sufficient information to form a belief as to the truth of the allegations and, therefore, denies the same.

7. Defendant Aiken Electric admits the allegations of Paragraph 7 of the Complaint.

8. Defendant Aiken Electric admits the allegations of Paragraph 8 of the Complaint, but denies that such power requirements are “minimal” and that such map attached as Exhibit A is accurate.

9. In response to Paragraph 9 of the Complaint, Aiken Electric admits that the current line will need to be upgraded to serve the referenced dredger and that such upgrade can reasonably be completed in 60 to 90 days from the date of formal service request. Aiken Electric denies the remaining allegations in Paragraph 9 of the Complaint.

10. Defendant Aiken Electric admits the allegations of Paragraph 10 of the Complaint in that South Carolina Minerals, Inc. (“SC Minerals”) would bear the cost of the line upgrade and that it would be inequitable to request that Aiken Electric’s membership pay for SC Minerals’ service upgrade. Aiken Electric denies the remaining allegations in Paragraph 10 of the Complaint.

11. In response to Paragraph 11 of the Complaint, Aiken Electric denies that it stated that it would take more than one year before construction could be completed. Rather, Aiken

Electric specifically informed SC Minerals that the line upgrade would only take 60 to 90 days from the date SC Minerals executes a letter of intent.

12. In response to Paragraph 12 of the Complaint, Defendant Aiken Electric lacks sufficient information to form a belief as to the truth of the allegations and, therefore, denies the same.

13. In response to Paragraph 13 of the Complaint, Defendant Aiken Electric lacks sufficient information to form a belief as to the truth of the allegations and, therefore, denies the same.

14. In response to Paragraph 14 of the Complaint, Defendant Aiken Electric lacks sufficient information to form a belief as to the truth of the allegations and, therefore, denies the same.

15. In response to Paragraph 15 of the Complaint, Aiken Electric responds that the statute speaks for itself and, therefore, denies any allegation not contained within the statute.

16. Defendant Aiken Electric denies the allegations of Paragraph 16 of the Complaint and further alleges that electric service can be made adequate and dependable within 60-90 days of SC Minerals formal request for electric service.

17. Defendant Aiken Electric denies the allegations of Paragraph 17 of the Complaint.

18. Defendant Aiken Electric denies the allegations of Paragraph 18 of the Complaint.

FOR A SECOND DEFENSE
(Failure to Allege Facts Sufficient to Constitute a Cause of Action)

19. The Complaint taken in the light most favorable to the Plaintiff fails to allege facts sufficient to constitute a cause of action against the Defendant Aiken Electric and should, therefore, be dismissed.

FOR A THIRD DEFENSE

(Compliance with Commission Regulations and Territorial Assignment Act)

20. The allegations of Paragraphs 1 through 19 are realleged and incorporated by reference.

21. The SC Minerals premises is located wholly within Aiken Electric's assigned service territory. Pursuant to S.C. Code Ann. § 58-27-620 (1976), Aiken Electric has the exclusive right to supply electricity to the SC Mineral's premises by virtue of the Territorial Assignment Act by the Commission.

22. The SC Minerals premises is located outside of SCE&G's assigned territory. As such, SCE&G has no legal right to serve the SC Minerals premises. Furthermore, SC Minerals request that SCE&G's provide electric service to SC Minerals premises is in violation of the Territorial Assignment Act, S.C. Code Ann. § 58-27-620(1)(d)(iii), in that the plant and dredger are located entirely within Aiken Electric's exclusive assigned territory and no statutory exception for service by SCE&G exists.

23. At all relevant times herein, Aiken Electric has complied with the Territorial Assignment Act and any applicable Commission regulations related thereto.

FOR A FOURTH DEFENSE

(Ripeness)

24. The allegations of Paragraphs 1 through 23 are realleged and incorporated by reference.

25. This matter is not ripe for adjudication as Aiken Electric is able to upgrade its facilities within 60-90 days of SC Minerals letter of intent and formal request for service.

FOR A FIFTH DEFENSE
(Commercially Reasonable Industry Standard)

26. The allegations of Paragraphs 1 through 25 are realleged and incorporated by reference.

27. At all relevant times herein, Aiken Electric has operated within a commercially reasonable industry standard by delivering timely and dependable electric service to the SC Minerals plant.

28. Upon information and belief, prior to contacting SCE&G, SC Minerals never alleged that Aiken's Electric's service was inadequate.

29. SC Minerals' Complaint should be dismissed as Aiken Electric's current service is more than adequate and its offer to upgrade the service line to the dredger within 60-90 days is reasonable, adequate, and dependable.

FOR A SIXTH DEFENSE
(By Way of Third-Party Complaint)

30. Aiken Electric realleges and incorporates by reference herein Paragraphs 1 through 29 above as if repeated verbatim.

31. Complaint/Plaintiff SC Minerals has filed an action against Aiken Electric alleging that Aiken Electric's service to SC Minerals is inadequate under S.C. Code Ann. § 58-27-660.

32. In Paragraph 18 of Plaintiff's Complaint, SC Minerals requests that the Commission reassign electric service suppliers and that SCE&G be allowed to serve its manufacturing plant located within Aiken Electric's exclusive service territory.

33. Aiken Electric asserts this third-party claim against the Third-Party Defendant, SCE&G, in accordance with Rule 14 of the South Carolina Rules of Civil Procedure.

34. Upon information and belief, Respondent, South Carolina Electric & Gas Company, Inc. (“SCE&G”), a South Carolina Corporation, is an electric utility in the business of furnishing electric service for domestic, commercial or industrial customers within the State of South Carolina. The address of SCE&G is:

South Carolina Electric & Gas Company, Inc.
1426 Main Street
Columbia, South Carolina 29218
Telephone: (803) 748-3477

35. The Commission has jurisdiction over the parties and subject matter of this dispute pursuant to S.C. Code Ann, §§ 28-27-10 et. seq.

36. SCE&G has intentionally tortuously interfered with Aiken Electric’s prospective contractual relationship with SC Minerals.

37. Upon information and belief, SCE&G intentionally interfered with the Aiken Electric’s potential contractual relationship with SC Minerals by representing to SC Minerals that it could serve the SC Minerals premises. Such representation was for an improper purpose and method as SCE&G has no legal right to serve SC Minerals, as the SC Minerals premises is located wholly within Aiken Electric’s assigned service territory. Furthermore, rather than swapping service territory with Aiken Electric, SCE&G contacted SC Minerals for the improper purpose of attempting to wrongfully “oust” Aiken Electric from its assigned territory.

38. SCE&G’s actions have caused injury to Aiken Electric. Aiken Electric faces stranded infrastructure costs, decreased assigned territory, as well as reduction in accounts receivable through losing the SC Minerals premises.

WHEREFORE, having fully answered the Complaint, and further having stated its third-party complaint, the Defendant/Third-Party Plaintiff prays that the Plaintiff’s claims be dismissed with prejudice and the Defendant awarded its costs, including reasonable attorneys’

fees and such other and further relief as is necessary and appropriate.

In the alternative, pursuant to S.C. Code § 58-27-660(1) as well as sound public policy, Aiken Electric requests that the Commission swap the SC Minerals premises for a comparable electric load located within SCE&G's assigned territory.

s/ J. David Black

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Attorneys for Defendant/Counterclaim Plaintiff
Aiken Electric Cooperative, Inc.

December 18, 2008

Columbia, South Carolina

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **Answer And Third Party Complaint Of Defendant Aiken Electric Cooperative, Inc.** has been served upon counsel of record by depositing a copy of the same, first-class postage prepaid, in the United States Mail and electronic mail on the 18th day of December, 2008, to the address shown below.

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SOWELL GRAY STEPP & LAFFITTE, L.L.C.
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s/ J. David Black
NEXSEN PRUET, LLC